

PT 99-35

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

SUNSET HOME)	Docket #	97-1-51
Applicant)	A.H. Docket #	98-PT-0011
)		
v.)	Parcel Index #	23-2-0923-000
)		
)		
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Jennifer Winking, Scholz, Loos, Palmer, Siebers & Duesterhaus for Sunset Home.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, 101 W. Jefferson, Springfield, Illinois on July 14, 1998, to determine whether or not Adams County Parcel Index No. 23-2-0923-000 qualified for exemption during the 1997 assessment year.

Judith Kirlin, Administrator of Sunset Home (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1997 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether the parcel was used by the applicant for charitable purposes during the 1997 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned this parcel during all of the 1997 assessment year. It is also determined that the applicant is not a charitable organization.

Finally, it is determined that the applicant did not use the property for charitable purposes during the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) that Adams County Parcel Index No. 23-2-0923-000 did not qualify for a property tax exemption for the 1997 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 9)

2. On September 22, 1997, the Department received a property tax exemption application from the Adams County Board of Review for Permanent Parcel Index No. 23-2-0923-000. The applicant had submitted the request, and the board recommended that the Department deny the exemption request for the 1997 assessment year. The basis of the board’s recommendation was that there is “[N]o reduced or waived fee for resident’s ability to pay.” The Department assigned Docket No. 97-1-51 to the application. (Dept. Grp. Ex. No. 2)

3. On January 15, 1998, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing held at the Department's offices in Springfield, Illinois, on July 14, 1998, was pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject parcel by a deed of trustee dated March 1, 1994.¹ The parcel at issue is a part of applicant’s 1.54 acre retirement complex. Various parcels were combined to make the complex. The applicant has a nursing home known as Sunset Home nursing care facility on property adjacent to the subject parcel. (Dept. Ex. 2 pp. 4-6, 31, 35; Dept.

¹ Several of applicant’s properties were placed in the trust by warranty deeds executed between December 10, 1984 and June 28, 1985. The various properties were conveyed to the applicant by the trustee’s deed in 1994.

Ex. No. 4)

7. On the parcel at issue is Sunset Home Villas (hereinafter referred to as the “Villas”). The villas consist of four buildings that house sixteen apartments. A portion of the property is vacant land. The applicant is intending to build a facility for persons inflicted with Alzheimer disease on the vacant portion of the subject parcel. (Dept. Ex. 2 pp. 31, 35; Dept. Ex. No. 4)

8. The villas are independent living facilities designed for persons who are still capable of living alone, yet who need or desire the care available from a nursing home. Residents of the villas have priority access to the nursing home facility in the event they cannot continue living independently. The villas were built from the mid 1980’s through 1990. (Dept. Ex. No. 2 p. 35; Tr. p. 20)

9. In order to live in the villas a resident desiring housing must either execute a contract agreement or a lease agreement. (Dept. Ex. No. 2 pp. 35-36, 38; Tr. p. 20-24)

10. The contract agreement obligates the resident to pay the applicant a “basic payment” of \$65,500.00² payable as follows:

(a) where the apartment unit has been constructed prior hereto, twenty percent (20%) of the basic payment is due at the signing of the agreement, and eighty percent (80%) of the basic payment is due at the time of possession by the resident which is to be within thirty (30) days of the signing of the agreement.

(b) where the apartment unit will be or is now under construction, one-third (1/3) of the basic payment is due upon signing the agreement, one-third (1/3) of the payment is due when the apartment unit is under roof, and the last third of the payment is due within thirty (30) days after completion of the apartment unit and upon granting of possession to the resident. (Dept. Ex. No. 2 pp. 25-29)

11. There are provisions for percentages of refund of the \$65,500.00 amount due to involuntary or voluntary termination of the contract. The amount refundable after nine years due to involuntary termination is \$0.00. The amount refundable after five years due to voluntary

² The testimony at the hearing was that not all of the residents came in at the \$65,500.00 amount. (Tr. p. 23) That assertion was not substantiated.

termination is \$0.00. If the tenant fails to complete the terms of the agreement, the applicant may retain \$2,000.00 of the basic payment as an administrative fee. The resident is also obligated to pay a non-refundable monthly maintenance charge of \$350.00. The applicant may adjust the amount of the maintenance charge. The contract agreement requires that a resident must be at least 60 years old. A resident is defined as the person signing the agreement. There may be no more than two (2) persons living in one apartment. The agreement grants the resident access to Sunset Home's beauty shop, barber shop, dining room, ice cream parlor, activities program, chapel and religious services, and emergency nursing services as available for the fees and costs generally charged ³by Sunset Home at the time of use. (Dept. Ex. No. 2 pp. 25-29)

12. The lease agreement is used infrequently to accommodate a resident who is undecided whether they want to stay at the villas for an extended period of time. The lease obligates the tenant to pay the applicant \$1,095.00 per month with an annual adjustment increase by the applicant. A \$2,000.00 security deposit is required at the signing of the lease. The refundable security deposit may be applied to any damages incurred by the applicant including the non-payment of rent. The lease grants the tenant access to Sunset Home's beauty shop, barber shop, dining room, ice cream parlor, activities program, chapel and religious services, and emergency nursing services as available for the fees and costs generally charged by Sunset Home at the time of use⁴. (Dept. Ex. No. 2 pp. 21-24, 35-36)

13. The portion of the land that is vacant on the subject parcel was used in 1997 as a campus for walking, other recreation, and as a scenic part of the applicant's complex. The land is expected to be developed during 1998-1999. The Alzheimer wing is expected to be operational in late 1998 and capable of housing forty-three residents. As of the date of the hearing however, the building was still in the planning stages. The decision as to whether a full basement was financially feasible had not been made. According to the minutes of applicant's board of trustees meeting, held on February 27, 1997, a draft contract was received from the

³ For example, haircuts are \$4.00 - \$5.00; perms - \$25.00-\$30.00; shampoo & condition - \$2.00. Meals are: \$2.50 for breakfast, \$3.00 for lunch or supper, and \$4.00 for Sunday noon. Holiday meals are \$5.00.

⁴ See footnote No. 3

architect regarding the new special care unit. The plans were approved according to the April 24, 1997, meeting minutes and the November 20, 1997, minutes showed that the architect was working with the Department of Public Health regarding approval of the plans. (Dept. Ex. No. 4; Applicant's Ex. Nos. 2, 3 & 4; Tr. p. 27)

14. The subject parcel is commonly known as 401 Washington Street, Quincy, Illinois. (Dept. Ex. No. 2 pp. 2, 31)

15. The applicant was incorporated under the general not-for-profit corporation act on December 3, 1889, as the Old People's Home of the St. Louis German Conference of the M. E. Church. The name has been changed several times. The applicant is in good standing with the office of the Secretary of State of Illinois. The purpose of the corporation is "to provide a suitable Christian Home for aged and infirm persons." (Dept. Ex. No. 2 p. 33; Applicant's Ex. No. 1 pp. 1, 4 - 8)

16. The applicant is exempt from the payment of federal Income tax pursuant to a 501(c)(3) designation by the Internal Revenue Service that was verified by a letter dated December 22, 1982. (Applicant's Ex. No. 1 p. 44)

17. The order issued to the applicant regarding the hearing scheduled in this matter requested additional information including a complete financial statement for 1997 itemizing sources of income and expenses. The financial statement submitted by the applicant was not complete⁵ and showed a net profit for the villas in 1997 in the amount of \$3,627.50. (Dept. Ex. 5; Applicant's Ex. No. 1 pp. 18-42)

18. I take administrative notice of the fact that Sunset Home of the United Methodist Church was granted a property tax exemption pursuant to Docket No. 73-627 for Lot 9 and the North 2 feet of Lot 10 situated in James Woodruff's Subdivision, which is Sunset Home nursing

⁵ The statement page at 18 of the exhibit was broken down by months with income derived from the monthly maintenance fees and the Villa Lease program. The expenses included the villa operating expenses and depreciation and management costs attributed to the villa. The statement had no mention of any income to the applicant for the basic payment required of all residents who execute the Sunset Villa Contract Agreement which mandates the monthly maintenance fee. Pages 19 through 42 of the exhibit are a month by month financial report for the applicant. Again no mention was included regarding the basic payment. I therefore find that the financial statement submitted by the applicant for the subject parcel for the 1997 assessment year is not complete.

care facility. Additional exemptions were issued to Sunset Home of the United Methodist Church and Sunset Home. Those exemptions were granted pursuant to Docket No. 761-5 for Lot 8 of James Woodruff's Subdivision, used for parking; Docket No. 7801-10 for Adams County Parcel Index No. 2-983 used for storage and parking; Docket No. 96-1-48 for Adams County Parcel Index No. 23-2-0998-000 used for parking; Docket No. 96-1-49 for Adams County Parcel Index No. 23-2-0988-000 used as a garage/maintenance building; Docket No. 97-1-2 for Adams County Parcel Index No. 23-2-0905-000 used for parking; Docket No. 97-1-45 for Adams County Parcel Index No. 23-2-0957-000 for land located across the street from and in connection with Sunset Home; Docket No. 97-1-46 for Adams County Parcel Index No. 23-2-0928-0000 for land located next to Sunset Home, currently landscaped and held for possible future expansion of Sunset Home; and Docket No. 97-1-47 for Adams County Parcel Index No. 23-2-0964-000 for land located across the street from and used in connection with Sunset Home. (Applicant's Ex. No. 1 pp. 11, 47, 48, 58, 60, 61, 62, 63, 64, & 65)

19. I also take administrative notice of the fact that Sunset Home of the United Methodist Church was denied a property tax exemption pursuant to Docket No. 83-01-20 for Adams County Parcel Index No. 23-2-0987-000. In that case the Director of the Department adopted the Administrative Law Judge's determination that Sunset Home of the United Methodist Church was not a charitable organization and that the primary use of that property was not charitable. The building on the property was used for storage purposes.

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago

v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

The applicant asserts that because it has been granted prior exemptions by the Department that this exemption should also be granted. Although the applicant has been declared by the Department, on other occasions, to be a charitable organization that used parcels for charitable purposes, that determination is not binding on this decision. Not only that, the applicant was found, after a hearing, not to be a charitable organization pursuant to Docket No. 83-01-20. A cause of action for taxes for one year is not the same as or identical with a cause of action for taxes for subsequent years. A property owner may be required to litigate the issue of its exempt status annually. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill.App.3d 542 (1st Dist. 1981), Application of County Collector of Du Page County, 157 Ill.App.3d 355 (2nd Dist. 1987); Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App. 3d 816 (3rd Dist. 1978); Du Page County Bd. Of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995); People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill.App.3d 1005 (4th Dist. 1980). I therefore find the questions of whether this applicant is a charitable organization and whether this parcel was used for charitable purposes during the 1997 assessment year are both before me.

It should be noted that the Adams County Supervisor of Assessments and the County Board of Review recommended denying this exemption because the applicant does not reduce or waive fees for a resident's ability to pay. It is always helpful to have information directly from the persons who will be receiving the property taxes and have the ability to govern an applicant.

I particularly appreciate having them actively involved in the process of ascertaining whether an applicant does in fact qualify for a property tax exemption.

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (c) Old people's homes,. . . if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code. . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services

In order for the applicant to qualify for an exemption under this statute, it must first be ascertained that the applicant is a charitable organization. This exemption applies to institutions of public charity. Illinois Courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by a charitable organization and exclusively used for purposes which qualify as charitable within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter referred to as "Methodist Old People's Home"). They have also ascribed to the following definition of "charity[.]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all who need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home at 157.

In addition, the primary use of the property must be for charitable purposes. This applicant's articles of incorporation do not provide for a waiver of fees as suggested in subsection (c) of 35 ILCS 200/15-65. Although there was testimony that the bylaws had a provision for waiver of fees, those documents were not provided at the hearing. The testimony of the administrator for the applicant was that she had not been confronted with that situation.

The attorney for the applicant provided a copy of the bylaws with her post-hearing brief. In the mission statement of the bylaws, found at article III, is stated "In accordance therewith SUNSET HOME provides these services based upon the individual's ability to pay and when necessary will reduce or waive fees in order to provide services for those in need." The statement does not appear in applicant's purpose clause of its articles of incorporation. This language is not incorporated into any of the lease provisions submitted regarding the property herein, nor was there any evidence at the hearing⁶ that the applicant, in fact, waived fees if a tenant was unable to pay for a villa room or other services offered by the applicant on the subject parcel in 1997.

In actions by corporations to have real estate declared exempt from taxation for certain years on the grounds that it is a charitable corporation, the Illinois Supreme Court has held that the certificate of incorporation is the controlling evidence of the purpose for which the organization was created. Oak Park Club v. Lindheimer, 369 Ill. 462 (1938). It is also well settled in Illinois that the character and purpose for which a corporation is organized, must be ascertained from its articles of incorporation. People v. Wyanett Light Co., 306 Ill. 377 (1922), and also, Rotary International v. Paschen, 14 Ill.2d 480 (1958), Du Page County Bd. Of Review v. Joint Com'n on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995) *leave to appeal denied*. The purpose clause of the applicant's articles of incorporation herein states that the corporation is formed to provide a suitable Christian Home for aged and infirm persons. There is no provision for a waiver of fees contained in the articles of incorporation.

Regarding the guidelines established in Methodist Old People's Home, I find that the applicant has failed to establish that the benefits derived were for an indefinite number of persons and that charity was dispensed to

⁶ The administrator did testify that out of 190 residents, about 63 or 64 are on Medicaid. As there are only 16 apartments on the parcel at issue and the applicant limits the number of persons allowed to occupy each unit to a maximum of two, the maximum number residents allowed in the villas on the parcel at issue would be 32. I therefore find that this information cannot be relied upon regarding the policies of the applicant for the parcel at issue.

all who needed and applied for it. I also find that because the applicant did not meet the foregoing requirements that an obstacle was placed in the way of those seeking the benefits. I find that the applicant has no shareholders or capital stock.

I also find that the applicant profits from the venture. Regarding the subject parcel, the applicant's funds are derived mainly from rents, the basic payment, and the monthly maintenance charge. None of those payments can be characterized as public and private charity. I therefore find that the applicant's actions and policies do not comply with guideline No. 2 of Methodist Old People's Home that requires that an applicant earn no profits or dividends and derive its funds from public and private charity.

The applicant in its brief consistently asserts that no profit is made with the villa enterprise and therefore the parcel at issue should qualify for exemption. Not only is that assertion not supported by the facts of this case⁷, the Illinois Supreme Court stated in Turnverein "Lincoln" v. Bd of Appeals, 358 Ill. 135 (1934), citing People v. Withers Home, 312 Ill. 136 (1924) "that if property, however owned, is let for return, it is used for profit and so far as its liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss." *Id.* at 144.

I also find the facts and analysis in Fairview Haven v. Dep't of Revenue, 153 Ill.App.3d 763 (4th Dist. 1987) (hereinafter referred to as "Fairview Haven") persuasive. The facts in Fairview Haven are almost identical to the facts before me. Fairview Haven was organized and supported by churches and its purpose was to care for the elderly. At issue was a single story building that contained 16 independent-living apartment units. The remainder of the building was an intermediate care facility. In the intermediate care facility, residents were charged a monthly fee and rates were adjusted to a resident's ability to pay. Public aid recipients resided in the intermediate care facility.

In the independent living units, five apartments were leased on a rental basis and the other eleven were occupied on a purchase basis with the loan returned to the resident's estate or resident upon termination of the occupancy. The entire purchase amount had to be paid prior to

⁷ See finding of fact No. 16.

occupancy with monthly fees to cover costs. The Appellate Court found that the intermediate care facility qualified for an exemption while the independent units did not. The court applied the reasoning used in Methodist Old Peoples Home and related cases. I find the circumstances in Fairview Haven to be remarkably similar to the ones employed by the applicant herein. *See also* Good Samaritan Home v. Dep't of Rev., 130 Ill.App.3d 1036 (4th Dist. 1985).

Regarding the vacant portion of the parcel at issue, the Illinois Courts have stated that vacant property does not qualify for an exemption. The attorney for the applicant in her brief cites the case of Weslin Properties, Inc. v. Department, 157 Ill.App.3d 580 (1987) in which the Appellate Court held that a portion of the property at issue which was under development and adaptation for exempt use, qualified for exemption. That case is only applicable when an applicant has proven that the property will be used for an exempt use. That is not the case before me. In the case of People ex. rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt.

Based upon the foregoing, I find that the applicant owned the subject parcel for the entire 1997 assessment year. Regarding the character of the applicant and use of the subject parcel, I find that the applicant is not a charitable organization and that the applicant did not use Adams County Parcel Index No. 23-2-0923-000 for charitable purposes during 1997. It is therefore recommended that Adams County Parcel Index No. 23-2-0923-0000 remain on the tax rolls for 1997 and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
March 2, 1999